

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

DEPARTMENT OF EDUCATION,)
STATE OF HAWAII,)
Plaintiff,)
vs.)
N.D., BY AND THROUGH HIS)
PARENTS, L.D. AND M.D., et al.,)
Defendants.)

Civ. No. 10-00297 AWT-BMK
ORDER GRANTING PLAINTIFF'S
MOTION TO EXTEND TIME FOR
FILING PLAINTIFF'S OPENING
BRIEF; FINDINGS AND
RECOMMENDATION TO DENY
DEFENDANTS' MOTION TO
DISMISS FOR FAILURE TO
PROSECUTE

ORDER GRANTING PLAINTIFF'S MOTION TO EXTEND TIME
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RECOMMENDATION TO DENY DEFENDANTS'
MOTION TO DISMISS FOR FAILURE TO PROSECUTE

Before the Court is Plaintiff's Motion to Extend Time for Filing Plaintiff's Opening Brief (Doc. 27). The Court heard this Motion on April 26, 2011. After careful consideration of the Motion, the supporting and opposing memoranda, and the arguments of counsel, Plaintiff's Motion is GRANTED. Additionally, as stated below, the Court finds and recommends that Defendants' Motion to Dismiss For Failure to Prosecute (Doc. 26) be DENIED.

On December 1, 2010, this Court held a Further Rule 16 Scheduling Conference, which Joanna B.K.F. Yeh (then-counsel for Plaintiff) attended. No one appeared for Defendants in this case. At that Conference, the Court issued a

briefing schedule, with Plaintiff's Opening Brief due February 18, 2011. Because Plaintiff did not file an Opening Brief by that deadline, Defendant filed a Motion to Dismiss For Failure to Prosecute on March 17, 2010. Less than three hours later, Plaintiff filed the instant Motion to Extend Time for Filing Plaintiff's Opening Brief.

In Plaintiff's motion for an extension of time, as well as at the hearing on this motion, Plaintiff's new counsel, Kris S. Murakami, explained that Joanna Yeh abruptly left the Department of the Attorney General in December 2010. This case was then reassigned to Murakami. However, Yeh did not inform Murakami of the briefing schedule, and Murakami did not become aware of the briefing schedule until she received Defendants' Motion to Dismiss For Failure to Prosecute on March 17, 2011. She immediately moved to extend the briefing schedule. The Court also understands Defense counsel made no effort to determine why the Opening Brief had not been filed before filing the motion to dismiss.

Although the Attorney General's office should have kept better track of the briefing schedule, the Court is also dismayed that Defense counsel did not contact Plaintiff's counsel to inquire about the Opening Brief after realizing it was not filed by the deadline. Common professional courtesy would have included

some effort to communicate with Plaintiff's counsel and resolve the matter before filing a motion to dismiss.

This Court has the authority to extend the time for Plaintiff to file its Opening Brief. See Fed. R. Civ. P. 6(b)(1)(B) ("When an act may or must be done within a specified time, the court may, for good cause, extend the time . . . on motion made after the time has expired if the party failed to act because of excusable neglect."). The Court finds that good cause and excusable neglect warrant extending the deadline for Plaintiff's Opening Brief. Therefore, the Court GRANTS Plaintiff's Motion to Extend Time for Filing Plaintiff's Opening Brief. As stated at the hearing on this matter, Plaintiff's Opening Brief is now due May 18, 2011.

Further, because the Court extends the time for Plaintiff to file its Opening Brief, the Court finds and recommends that Defendants' Motion to Dismiss For Failure to Prosecute be DENIED as moot.

DATED: Honolulu, Hawaii, May 10, 2011.

IT IS SO ORDERED, FOUND, AND RECOMMENDED.

/S/ Barry M. Kurren

Barry M. Kurren
United States Magistrate Judge



Plaintiff Educ., State of Hawaii v. N.D., by and through his parents, L.D. and M.D., et al., Civ. No. 10-00297 AWT-BMK; ORDER GRANTING PLAINTIFF'S MOTION TO EXTEND TIME FOR FILING PLAINTIFF'S OPENING BRIEF; FINDINGS AND RECOMMENDATION TO DENY DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO PROSECUTE.